

Appl. No. 10/042,786  
Amdt. dated May 25, 2004  
Reply to Office Action of March 31, 2004

### **REMARKS/ARGUMENTS**

Claims 38 - 52 are pending in the present patent application.

Reconsideration of the present application in view of the foregoing amendment and the following remarks is respectfully requested.

#### **A. Rejection Of Claims 38 - 52 Under 35 U.S.C. § 103**

Claims 38 - 52 stand rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 5,763,044 issued to Ahr et al. on June 9, 1998 (hereinafter referred to as the "Ahr et al. reference"). Applicants respectfully traverse the rejection.

Regarding Claim 38, the Examiner states that the Ahr et al. reference

"discloses a method for producing an absorbent web having a dry feel when wet (Abstract) cellulosic basesheet (col. 6, lines 40-45) having an upper surface and a lower surface, the upper surface having elevated and depressed regions (Figure 7). Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses the height of the apertures is .254-1.01 mm (col. 9, lines 6-10 Benz discloses area and diameter of apertures, from which the examiner calculated the height). The height of the apertures corresponds is at least .2mm.

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Ahr discloses a method for producing an absorbent web having a dry feel when wet (Abstract) further comprising the step of depositing hydrophobic matter (col. 5, lines 63-65) preferentially on the elevated regions of the upper surface of the base sheet (Figure 7). Ahr does not specifically disclose a fibrous nonwoven web. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the loose fibrils taught in Ahr in a nonwoven web, since forming in one piece an article, which has formerly been formed in several pieces and put together involves only routine skill in the art.

Ahr further discloses the base sheet is attached to an absorbent core, which is interposed between the base sheet and an impervious web (Figure 2)."

Applicants submit that the Ahr et al. reference does not establish a prima facie case of obviousness. To establish a prima facie case of obviousness, the reference must disclose or suggest all the claim limitations. The Ahr et al. reference does not teach or suggest the height of the apertures or the thickness of the web. Further, the Examiner cites the U.S. Patent No. 3,881,987 issued to Benz on May 6, 1975 (hereinafter referred to as the "Benz reference") as providing enough information for the Examiner to make the height calculations. Applicants respectfully submit that the cited passage of the Benz reference does not refer to the height of the apertures or the thickness of the web, but to the diameter and area of the apertures when viewed from above (the plan view). The Benz reference refers to Figure 1 which shows an aperture (20), in a plan view, surrounded by solid portions of the web (21). The Benz reference states that the diameter of an aperture can range from about 0.015 inches to about 0.050 inches. The Benz reference further states that the cross-sectional area can vary from about  $0.15 \times 10^{-3}$  square inches to about  $2 \times 10^{-3}$  square inches. Both measurements appear to refer to the plan view geometry as shown in Figure 1. Converting the diameters to areas (assuming the apertures

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represent perfect circles in the absence of teachings to the contrary). Applicants squared the diameters and multiplied by  $\pi/4$ . The resulting areas range from  $0.1767 \times 10^{-3}$  square inches to  $1.96 \times 10^{-3}$  square inches. There are no teachings or suggestions in the Benz reference that the areas cited in the reference provide information on the thickness of the web or the height of any structures on the web. Regardless of the lack of teachings or suggestions of the Ahr et al. reference and the Benz reference, Applicants point out that the specification of the present invention states "Overall Surface Depth is intended to examine the topography produced in the basesheet, specially those features created in the sheet prior to and during drying processes, but is intended to exclude "artificially" created large-scale topography from dry converting operations such as embossing, perforating, pleating, etc." (See Page 22, lines 9 - 12). Therefore, the structures such as apertures are intended to be excluded when following the procedures for making Surface Depth measurements.

In addition, the Ahr et al. reference, on Col. 2, lines 1 - 15, states that the reference pertains to a product that disperses into fragments such that it is readily flushable in the toilet. The Ahr et al. reference specifically states that the "web preferably comprise a wetlaid apertured tissue having temporary wet strength resin incorporated therein." The Examiner did note that the Ahr et al. reference *did not* disclose a fibrous nonwoven web as the hydrophobic matter on the basesheet. Applicants respectfully disagree that it would be obvious to integrate the fibrils of the Ahr et al. reference into a nonwoven web. Applicants submit that nonwoven webs are generally not known to disperse into fragments when placed in a toilet as would the wetlaid apertured tissue with its regions of fibrils of the Ahr et al. reference. Applicants further submit that replacing the fibrils as taught in the Ahr et al. reference with a contiguous nonwoven web would defeat the purpose of the Ahr et al. reference of allowing the web to disintegrate in toilet water (See Col. 5, lines 41 - 44). The Ahr et al. reference states that the fibrils must be applied in a manner that would not impair the dispersibility of the web. Replacing the fibrils with a contiguous web would tend to violate that requirement of the Ahr et al. reference.

Thus, Applicants submit that the Ahr et al. reference would not work as described or obtain the recited benefits if so modified. Accordingly, independent Claim 38 and dependent Claims 40 - 52 are believed to be novel and nonobvious over the cited reference.

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Regarding Claim 39, the Examiner states that "Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses a method of making an apertured topsheet involving the recited steps (Ahr col. 4, lines 49-66 and Benz col. 11, line 56 through col. 14, line 8)." Applicants again submit that the Ahr et al. reference does not establish a prima facie case of obviousness. To establish a prima facie case of obviousness, the reference must disclose or suggest all the claim limitations. Applicants submit that the Ahr et al. reference, or the Benz reference by reference, do not teach or suggest the joining of a nonwoven web aperture by hydroentangling with a three-dimensional through-dried tissue basesheet as claimed in the present invention. Applicants submit that the aperturing method of the Benz reference teaching a means for aperturing a wetlaid tissue web during drainage of the fibrous slurry. The Benz reference did not teach or suggest aperturing a nonwoven web or aperturing by hydroentangling.

Thus, Applicants submit that the Ahr et al. reference would not work as described or obtain the recited benefits if so modified. Accordingly, independent Claim 39 is believed to be novel and nonobvious over the cited reference.

Based on the foregoing remarks, the rejection to Claims 38 - 52 should be withdrawn.


Ecolchem Inc. v. Southern California Edison Co., 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000): We have previously held that "[t]he suggestion to combine may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). However, there still must be evidence that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1456; see also *In re Werner Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification...of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

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#### CERTIFICATE OF FACSIMILE TRANSMITTAL

I, Judy Garot, hereby certify that on May 25, 2004 this document is being transmitted via facsimile number (703) 872-9306 to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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